

BEFORE THE DEPT. OF TRANSPORTATION
DEPARTMENT OF TRANSPORTATION DOCKETS
WASHINGTON, D.C. 00 APR -3 PM 4: 14

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Joint application of)

AMERICAN AIRLINES, INC.)
and THE TACA GROUP)

) Docket OST-00-7088 -5

under 49 U.S.C. 41308 AND 41309 for approval)
of and antitrust immunity for agreement)

AMERICAN AIRLINES, INC., et. al.,)
and THE TACA GROUP RECIPROCAL)
CODESHARE SERVICE PROCEEDING)

) Docket OST-96-1700 -148

MOTION OF DELTA AIR LINES, INC.

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April 3, 2000

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MOTION OF DELTA AIR LINES, INC.

Delta Air Lines, Inc. (“Delta”) hereby moves the Department to require American Airlines, Inc. (“American”) and the **TACA** Group (“**TACA**”) (collectively the “Joint Applicants”) to produce additional documents and information that are vital to the Department’s ability to make an informed decision, and for interested parties to comment, on the **above-**captioned applications for antitrust immunity and the renewal and expansion of **American/TACA** codeshare authority.

The Department should make clear that confidential documents produced by the Joint Applicants in either proceeding may be used in reference to the other proceeding. The Department should also suspend the answer date for comment on the antitrust immunity application until interested parties have had the opportunity to review the required additional information. Interested parties should also have the opportunity to file new or supplemental answers to the codeshare renewal application, once the required information has been produced.

Due to American's unprecedented regional dominance of service to Latin America and American's distinction of being the **only** hub operator at the critical Miami gateway, the proposed codeshare and antitrust immunity applications raise unique competitive concerns that are not present on most codeshare routes or antitrust immunity applications involving open skies countries. American's dominance at Miami, combined with the fact that the **TACA** Group is American's only effective competition on Miami-Central America routes, would create a de-facto monopoly if American and **TACA** were allowed to proceed with their substantially expanded codeshare and antitrust immunity plans as proposed.

The imminent risk of harm to competition and the public interest was strongly articulated by the U.S. Department of Justice in its Comments on the original codeshare application in Docket **OST-96-1700**. The DOT ultimately approved the codeshare over the objections of the Department of Justice and other carriers but imposed a number of significant conditions designed to protect competition including:

1. Prohibiting a Joint Alliance Committee between American and **TACA**;
2. Requiring fixed seat blocks (and a fixed price per seat) on eight Miami-Central America overlap routes;
3. Prohibiting **American/TACA** exclusivity (that would restrict **TACA** carriers from entering into marketing or code-share agreements with other U.S. carriers);
4. Requiring the carriers to maintain separate pricing, inventory control and yield management activities;
5. No coordination between American and **TACA** on fares or seat availability;
6. Requiring the Joint Applicants to submit any subsequent **American/TACA** implementing agreements for the DOT's prior review and approval;
7. Imposing an O&D Survey reporting requirement for **TACA** carriers;
8. Prohibiting common branding (without prior DOT approval); and
9. Requiring the Joint Applicants to submit code-share agreements for approval in 2 years (May **2000**)

Furthermore, the Department said that in considering a **request for** renewal of the **American/TACA** arrangement in May 2000, the Department would review the competitive structure of the market at the time, and that the failure of the **TACA** carriers to engage in codeshare relationships with other U.S. carriers – which has not happened -- would be a significant factor in determining whether or not to renew the codeshare.

The codeshare renewal and antitrust immunity applications, as proposed, would effectively nullify all of the Department's carefully crafted conditions that were designed to protect competition and the public interest. In these circumstances, the Department must require additional information from the Joint Applicants, so that the Department can adequately assess the new competitive landscape that would result from the integration of these two primary competitors.

Delta urges the Department to issue a Notice, requiring American and **the TACA** Group to produce the following items of information:

1. Explain in detail why the proposed arrangement is exclusive (Paragraph 9 of the Alliance Agreement), which is a direct violation of the Department's codeshare approval conditions.

2. Describe in detail **TACA**'s efforts to enter into codeshare arrangements with other US carriers, including an account of all meetings and discussions, draft codeshare agreements or other commercial proposals, and including an explanation by **TACA** of why it found those agreements to be commercially unacceptable.
3. Provide copies of all studies, surveys, analyses, and reports (completed by AA and/or **TACA** staff or agents acting on their behalf) which identify, examine, forecast, and/or quantify the effects and benefits of the American Airlines/**TACA** Group codeshare alliance from May 20, 1998 (when the codeshare agreement was approved). The documents provided should be complete, with all backup detail, and should include any and all analyses with respect to market shares, competition, competitors, fares, markets, potential for traffic growth or expansion into geographic markets. (If not contained in the document itself, the date of preparation and the name and title of each individual who prepared each such document should be included). Describe how the proposed amended codeshare and antitrust immunity approval would affect the benefits under the current agreements/arrangements between American and the **TACA** Group.

4. Provide a detailed discussion of the current and planned integration of both parties' operations with all third party airlines, including domestic, U.S. -Latin America, and other international routes. Identify all current marketing arrangements between the parties (individually or jointly) and other airlines, and all such arrangements that the parties are in any way contemplating or considering for the future. Specifically include a discussion of how the proposed arrangement will affect American and **TACA's** interaction with each of American's Latin American strategic partners, with whom American has a codeshare, marketing, or investment relationship. Describe whether and how these services have been or will be integrated. Include in this discussion a description of whether the **American/TACA** codeshare arrangement would be integrated into the **oneworld** alliance and, in particular, how the **AA/TACA** codeshare and **oneworld** arrangement would be linked to any other alliance between either Party and any third airlines. Specifically address how the overlap between the American **Airlines/TACA** Group and any other such alliances will be managed in terms of capacity allocation, pricing and revenue

and inventory management (distinguishing between local non-stop and flow traffic), and sales and marketing strategies.

5. Provide a copy of all internal documents since January 1996 (either by staff of American Airlines and/or the **TACA** Group or agents acting on their behalf) that discuss, consider or analyze the impact of the display of codeshare arrangements in computer reservation systems (including the multiple displays of flights under different codes) on travel agency bookings, airline sales, and airline market share.
6. Provide a traffic and revenue forecast for all markets that will be affected by the proposed codeshare arrangement. Specifically address the competitive effects of granting the codeshare request in Miami-Central America city-pair markets in which American and **TACA** would codeshare; assess how increased traffic flows in gateway to gateway markets resulting from all connecting market sectors will affect seat availability and fares for local passengers in those gateway to gateway markets, and between other Central American cities and Miami; and identify the extent to which **AA/TACA** will compete with any other **codeshare/alliance**

arrangement to which either American or **TACA** is a party and the extent to which **American/TACA** will compete in other city-pair markets.

7. Identify the extent to which traffic and revenue forecasts for **American/TACA** will be stimulated versus diverted from other U.S. carriers (by carrier) should the revised codeshare and antitrust immunity applications be approved.
8. Provide directional origin and destination data (**100%** census) for all itineraries operated by American and/or the **TACA** Group (exclusively, jointly, or with third parties) that involve a U.S.-Central America segment between a Central American city and Miami. This includes all behind/beyond markets that use Miami as a Central American gateway.

Data submitted should be submitted by quarter from the second quarter of **1998** through the latest available period.

Directional itineraries consisting **of more than** three segments **may** be omitted.

Records should be grouped by airport origin, airport destination, directionality, number of directional coupons, operating carrier,¹ and the fare class² of the itinerary's transatlantic segment. For each grouping, provide O&D nonstop mileage, passengers, rpms, and revenue. Records in each grouping should be broken into \$30 fare increments.³

WHEREFORE, Delta urges the Department to require the Joint Applicants to furnish the additional documents and information requested herein, to make such information available for use by interested parties in either of the captioned proceedings, to suspend the answer date for comments on the antitrust immunity application until the information request is complete, and to permit interested parties the opportunity to file new or

¹ If a directional itinerary is operated in part by AA, but not **TACA**, the carrier reported should be AA, regardless of third-party involvement. Likewise, if a directional itinerary is operated in part by **TACA**, but not AA, the carrier reported should be **TACA**, regardless of third-party involvement. If both AA and **TACA** have operated segments in the same directional itinerary, provide the carrier as **99** to signify an **AA/TACA** interline (disregard third-party involvement). American Eagle flights should be treated as an American flight.

² Fare classes should consist of first class, business class, coach full fare, coach APEX, coach promotion/deep discount, and frequent flyer. Fare classes not specifically listed here should be included in whichever listed fare class is most appropriate.

³ Top of \$30 fare increment preferred. For example, \$300 to signify that passengers in grouping paid between \$271 and \$300.

supplemental comments to the codeshare application once the information request has been satisfied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. Van der Bellen', is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that I have, this 3rd day of April, 2000, served the foregoing Motion of Delta Air Lines, Inc., upon those persons listed on the attached service list by depositing copies thereof in the United States mail, first class, postage prepaid.

A handwritten signature in cursive script, reading "Pauline C. Donovan", is written over a horizontal line.

Pauline C. Donovan

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